

UNAPPROVED - DRAFT

**BOARD OF DENTISTRY
MINUTES OF BOARD MEETING**

Friday, September 15, 2006

**Hotel Roanoke and Convention Center
110 Shenandoah Avenue
Roanoke, Virginia 24016**

- CALL TO ORDER:** A meeting of the Virginia Board of Dentistry was called to order at 9:05 a.m. Dr. Zimmet welcomed Jeffrey Levin, D.D.S. as a new Board member and congratulated Dr. Gokli on her appointment to the Board of Health Professions.
- PRESIDING:** Paul N. Zimmet, D.D.S., Vice-President
- MEMBERS PRESENT:** Meera A. Gokli, D.D.S.
Jacqueline G. Pace, R.D.H.
Darryl J. Pirok, D.D.S.
Misty L. Sissom, R.D.H.
Edward P. Snyder, D.D.S.
James D. Watkins, D.D.S.
Glenn A. Young, D.D.S.
Jeffrey Levin, D.D.S.
- MEMBERS ABSENT:** Millard D. Stith, Jr.
- STAFF PRESENT:** Sandra K. Reen, Executive Director
Cheri Emma-Leigh, Operations Manager
Patricia L. Larimer, Deputy Executive Director
Elaine Yeatts, Senior Policy Analyst
- COUNSEL PRESENT:** Howard Casway, Senior Assistant Attorney General
- QUORUM:** With nine members of the Board present, a quorum was established.
- PUBLIC COMMENT:** Mark Crabtree, D.D.S., president of the Virginia Dental Association (VDA) spoke on the work of the VDA Task Force on Licensure Examination. He said the Task Force addressed what role the Board should play in the examination process, and if it is even necessary to have an exam. He noted that one of the many functions of the Board is to conduct examinations and that the VDA is considering a resolution which strongly urges the Board to become a member of a testing agency. He further stated in regards to expanded duties for dental assistants that the VDA doesn't want certification as that would be too restrictive, that the approach used

for radiation safety would be a good model. He recommended that the provisions allow for dentists to do training for specific duties for a simpler process. In closing, he thanked the Board for giving so much to the profession.

Michael Link, D.D.S. commended the Board for its great work, said he agreed with Dr. Crabtree's comments and noted that he served on the VDA Task Force. He asked if everyone had received his comments on fees about having the 5 to 10% of licensees that use the disciplinary system pay for it by having monetary penalties come to the Board. He advised that the VDA was looking into requesting legislation to accomplish this.

John Harris, D.D.S. stated he served on the Board in the early 1990's, and has been active with SRTA. He stated support for Dr. Link's proposal about fees. He said at the last meeting there was a proposal before the board to grant one (1) continuing education hour for volunteering in a free clinic. He said allowing this would have a positive impact and encouraged the Board to revisit this item. He also noted that he served on the Task Force Committee and agrees with the consensus of that group. He stated that the big difference between WREB and the other three (3) exams was mostly about criteria in standard of care. He asked the Board to join SRTA or one of the other agencies that has the clinical testing of crown preparations.

**APPROVAL OF
MINUTES:**

Dr. Zimmet asked if everyone had a chance to review the minutes. Dr. Gokli moved to approve the Minutes of the Formal Hearing of June 8, 2006. The motion was seconded and passed.

Dr. Gokli moved to approve the Minutes of the Board Meeting of June 9, 2006. The motion was seconded and passed.

Dr. Gokli moved to approve the Minutes of the Formal Hearing of June 16, 2006. The motion was seconded and passed.

Dr. Gokli moved to approve the Minutes of the Public Hearing of July 21, 2006. The motion was seconded and passed.

Dr. Gokli moved to approve the Minutes of the Formal Hearing of August 5, 2006. The motion was seconded and passed.

Dr. Gokli moved to approve the amendment of the Formal Hearing

Minutes of December 8-9, 2005. The motion was seconded and passed.

REPORTS:

Regulatory-Legislative Committee: Dr. Snyder reported that the Committee met on September 14th and received comments from the VDA and the Dental School on the education and training provisions for dental hygienists to administer local anesthesia and nitrous oxide analgesia and from Dr. Keller requesting that the requirement for CPR training be changed to address those unable to complete the practice part of the course. He then asked Ms. Yeatts to review the guidance given by the Committee for the development of the regulations to allow dental hygienists to administer nitrous oxide and local anesthesia. She summarized the direction given for having education and training requirements for nitrous oxide and for local anesthesia and nitrous oxide, requiring training through an accredited program, requiring a written exam provisions for training done in other states. Ms. Yeatts explained that the plan is for the Committee to review the draft and bring a proposal forward to the December 8, 2006 Board meeting, then await gubernatorial review which will occur in the Spring of 2007, and hopefully have final regs in place in the Fall of 2007.

Executive Committee: Dr. Young stated the Committee met on September 14th and received a report on the development of an on-line law exam for dentists and dental hygienists. He stated the Committee was concerned that WREB has no hands on clinical component for prosthetic, crown and bridge and that the Committee adopted a recommendation, which will be addressed as an action item later in the agenda, that the Board notify WREB that the Board may stop accepting its exam in 2008 if the clinical crown preparation section is not restored.

SRTA Annual Meeting: Dr. Young reported that he attended the SRTA 2006 Annual Meeting in Northern Virginia in August.

Dr. Zimmet noted that he was unable to attend the recent WREB meeting because his flight was cancelled at the last minute.

Medical Reserve Corps: Dr. Pirok reviewed a brochure on the Medical Reserve Corps and stated he would like to see more dentist volunteers.

LEGISLATION AND

Regulatory Actions Status Report: Ms. Yeatts reviewed a chart

REGULATIONS:

which gives the status of the six regulatory actions that are in progress or recently completed. She reported that:

- (1) no action has been taken on expansion of duties for dental assistants;
- (2) the NOIRA comment period on administration of local anesthesia and nitrous oxide by dental hygienists closed on 9/6/06;
- (3) the fast track proposal to clarify application requirements for licensure will go into effect on 10/23/06;
- (4) the Board will be asked to adopt final regulations for the fee increases later in the agenda;
- (5) the fast track proposal to change the treatment team requirement for the administration of nitrous oxide will go into effect on 11/19/06; and
- (6) the final regulations implementing the 2005 legislative changes went into effect on 8/23/06.

Fast Track Revised Regulations: Ms. Yeatts noted that copies of the pending changes were in the agenda package.

Regulations to increase fees: Ms. Yeatts explained that the board's financial posture was re-evaluated based on FY 2006 year end figures it was determined that the proposed fees could be reduced. She stated that there was a significant increase in the number of new licensees as a result of licensure by credentials for dentists. She reviewed the revised fee proposals as presented in the agenda package noting the following changes:

- (1) renewal of an active dentist's license is reduced from \$315 to \$285;
- (2) renewal of an active license or permit to practice or teach dental hygiene is reduced from \$80 to \$75;
- (3) applications for a dental license by examination, a license to teach dentistry, a full-time faculty license, or a temporary permit is reduced from \$420 to \$400 and applications for dental license by credentials is reduced from \$525 to \$500.
- (4) applications for a dental hygiene license by examination, a license to teach dental hygiene, or a temporary permit as a dental hygienist is reduced from \$185 to \$175 and applications by endorsement is reduced from \$290 to \$275.

Ms. Yeatts stated that based on current projections with the proposed fee changes, the Board would have a positive cash balance by FY2009. Dr. Snyder asked what happens if the Board

has a large cash balance. Ms. Yeatts responded that reducing fees can be done for a period of time to reduce the balance without going through the regulatory process. Dr. Levin moved to adopt the revised fee proposal. The motion was seconded and passed.

Dr. Young asked if the Board would review Dr. Link's proposal to allow monetary penalties to be directed toward Board expenses. Dr. Zimmet asked that the Legislative-Regulatory Committee to look into this.

Administration of Analgesia and Local Anesthesia by Dental Hygienists: Ms. Yeatts noted that as reported earlier the Regulatory legislative Committee had begun development of the regulations. Ms. Reen noted that the public comment received on the NOIRA was in the agenda packages.

Status of Legislative Proposals: Ms. Yeatts stated that the Board's three proposals were submitted to Mr. Nebiker and that the decision about submitting the proposals to the General Assembly would not be known until December or January. Ms. Reen noted that on the proposal for establishing two classes of dental assistants, the Board received about 80 letters of opposition and 30 in support and reported receiving 2 letters of support for the proposals to eliminate the outdated statute on discipline and to clarify the requirements for licensure by credentials.

Dr. Young requested specific guidance on nitrous oxide as he will be addressing the Roanoke Valley Dental Society on October 4, 2006. The Board agreed that if any adjustment is needed with administering nitrous oxide, then the dentist must be in the room.

**BOARD
DISCUSSION/ACTION:**

Testing Agency Membership:

- **Attorney General's Opinion:** Mr. Casway reviewed the Opinion and stated the Board was free to contract or join a testing agency, but that participation would require compliance with the State Travel Regulations. He further stated that a board member who votes to approve a contract or to join an organization would be prohibited from accepting employment or reimbursement for services after departure from the Board by the Procurement Act. Dr. Young moved to have the Board join one testing agency.

The motion was seconded and passed.

- **ADEX, SRTA, WREB, NERB, CRDTS, CITA:** Mr. Casway reviewed each of the testing agency's membership requirements, travel reimbursement expenses, and voting requirements. Dr. Young moved to join SRTA for one year. The motion was seconded and passed.

Ms. Reen reviewed a letter from Council of Interstate Testing Agencies (CITA) wherein they request a meeting with the Board to discuss the evolution of CITA and its current progress with examinations and candidate mobility. Dr. Zimmet suggested that the Board send someone to observe one of their exams. Dr. Snyder moved to send two members, a dentist and a dental hygienist, to observe. The motion was seconded and passed. Ms. Reen was asked to obtain information about the exams scheduled in 2007 for May 18-19, July 13-14 and July 20-21.

VAOMS Invitation: Dr. Zimmet reported that VAOMS extended an invitation to the Board to attend their reception on Wednesday, October 18, 2006 at the ADA meeting in Las Vegas. Ms. Reen was asked to decline the invitation since no one was able to attend.

The Southern Conference of Dental Examiners: Dr. Zimmet reported that the SCDE will hold their annual meeting in Oconee, South Carolina on January 26-28, 2007. He asked Board members to let Ms. Reen or him know if they are interested in attending.

Acceptance of WREB Exam: Dr. Young reported that the Examination Committee is concerned that the WREB Exam needs to be stronger in crown preparations. Dr. Young moved on behalf of the Committee that the Board notify WREB that crown preparation is an important clinical skill area to be tested and that unless the clinical test for crown preparations is restored for the 2008 WREB exam the Board may stop accepting WREB effective January 1, 2008. The motion was seconded and passed.

Letter from Dr. Peterson on license renewal: The Board reviewed a letter from Thomas W. Peterson, D.D.S. who disputes the imposition of a late for his 2006 renewal. Ms. Reen noted that

he was given the option of renewing in inactive status which he declined to do. Dr. Snyder reported that he had attempted to mediate this situation without success. The Board concluded that it must follow the regulations and there are no other options to offer.

Dr. Zimmet volunteered to send a letter to Dr. Peterson telling him the Board appreciates his 55 years of service and that the regulations do not allow for waiving the late fee.

Questions on Delegation from Dr. Link: After reviewing the questions submitted by Dr. Link and applying § 54.1-2711 of the Code of Virginia, it was decided that:

- (1) a dental hygienist or a dental assistant cannot take an impression for an occlusal guard;
- (2) a dental assistant cannot take an impression for a repair to a partial;
- (3) a dental assistant cannot take an impression to add a tooth to a partial; and
- (4) a dental hygienist or a dental assistant can adjust an occlusal guard outside the patient's mouth, and then have the dentist check the final fit.

Dr. Watkins stated that between 1991 and 1994, the Board allowed dental assistants to make impressions for temporary crowns. Staff was instructed to research the Board's past positions on this topic and the Regulatory Legislative Committee was asked to consider whether a change in the statute may be necessary.

General Supervision "7 Month Window": Dr. Watkins reported that a lot of dentists are having trouble with the 7 month window set for treatment under general supervision. He suggested that the timeframe needed to be increased and moved that the Board undertake a fast track regulatory action to change the timeframe to 10 months. The motion was seconded and passed.

Recognition of Mr. Nebiker: Ms. Reen stated that Mr. Nebiker will be retiring effective October 1, 2006 and presented a draft resolution that the Board might use to honor Mr. Nebiker's service to the agency. She requested guidance on the wording and indicated that she would have it formatted following the meeting. Ms. Sissom felt that editing was needed and Dr. Levin volunteered to assist staff with drafting. Dr. Watkins moved to adopt the resolution in concept and to have Dr. Levin and Ms. Reen prepare the resolution. The motion was seconded and passed.

**EXECUTIVE
DIRECTOR'S REPORT:**

Staffing Update: Ms. Reen announced that a new Administrative Assistant has been hired, her name is Catherine Chappell and she will begin on September 29, 2006. Ms. Chappell comes from Henrico Doctor's hospital where she currently works with credentialing and she has training as a paralegal. Ms. Reen stated the recruitment process for the new Executive Director position who will assume responsibility for the Board of Long-Term Care Administrators is underway with interviews scheduled for next week and second interviews scheduled for the first week in October.

2007 Board Schedule: Ms. Reen reviewed the 2007 meeting schedule, and stated that none of the Board meetings are scheduled to coincide with any association meetings. Dr. Watkins suggested that it works better to have the associations come to the Board's meetings in Richmond. Ms. Sissom agreed. Dr. Snyder commented that meeting in conjunction with an association is valuable exposure for the Board. Ms. Yeatts stated that in lieu of a Board meeting, some of the other Boards in the agency have an open forum during the association's meeting that allows Board members to give an update on regulations and answer questions from licensees. Dr. Zimmet decided that the Executive Committee would address this matter and come back with a report. Dr. Gokli moved adoption of the schedule as presented. The motion was seconded and passed.

Newsletter Correction: Ms. Reen stated that an error was made on page 5 of the May 2006 Bulletin in the Answers from the Board section. She reported that a licensee called to request a correction since antifungal medications are prescribed to treat vaginal yeast infections not antibiotics. Ms. Reen noted that this correction will be made in the next newsletter.

Radiation Safety Course Guidelines: Ms. Reen stated that she wanted to make everyone aware that the Department of Health did a rewrite of the radiation safety regulations and that she was working with the radiation program consultant to update the guidelines for courses to be Board approved and that revised guidelines should be addressed at the next Board meeting. She also noted that the Department of Health advised that there were only minor changes that would affect dental practices. Dr. Watkins stated there is a new hand held x-ray machine and that

he understands it is approved in Virginia, but not in other states. Ms. Sissom stated that it is used when you don't have walls and the distances needed to set up the standard equipment for x-rays.

**BOARD COUNSEL
REPORT:**

Petka Opinion Letter and Order: Mr. Casway stated that Dr. Petka's case was appealed and that the Circuit Court upheld the Board as stated in the opinion letter from Judge Thomas Horne. He reported that Petka did not appeal the court decision so the case is now closed. Mr. Casway asked the members to review the decision to see how important it is for the Board to obtain adequate testimony and to make its findings of fact clear.

Closed Meeting: Dr. Gokli moved that the Board enter into a closed meeting pursuant to § 2.2-3711(a)(7) of the Code of Virginia for consultation with legal counsel to deliberate in the matters of William Lennon, D.D.S., John Doe, D.D.S., Farhid Zurmati, D.D.S., and to consider a settlement proposal from Mr. Garrett, assistant attorney general, and Raquel Harris, D.D.S. Additionally, it was moved that Board counsel, Howard Casway, and Board staff, Sandra Reen, Patricia Larimer and Cheri Emma-Leigh attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

Reconvene: Dr. Gokli moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

Ms. Sissom moved to accept the Consent Order, as amended, in the matter of Raquel C. Harris, D.D.S. The motion was seconded and passed.

Advisory Letters: Mr. Casway stated that § 54.1-2400.2(F) of the Code of Virginia allows for an advisory letter to be sent to a person who was the subject of a complaint for which the Board has concluded that a disciplinary proceeding will not be instituted. Mr. Casway also stated that a letter informing the source of the complaint is currently being developed and once approved, will be available for Board use.

Summary Case Decision: Mr. Casway stated that § 2.2-4020.1 of the Code allows anyone who applies for licensure or anyone who received written notice of a potential violation to request a summary case decision from the agency. He said the Board had discretion over whether to issue such a decision and that he did not anticipate that this provision would be used very often.

**ELECTION OF
OFFICERS:**

Dr. Watkins reported that the Nominating Committee met yesterday and moves the election of Dr. Zimmet as President, Dr. Snyder as Vice-President and Dr. Gokli as Secretary-Treasurer. The motion carried unanimously.

ADJOURNMENT

With all business concluded, the Board meeting was adjourned at 2:40 p.m.

Paul N. Zimmet, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date